

Message Text

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70

ACTION L-03

INFO OCT-01 ARA-06 ISO-00 OFA-01 DLOS-04 SCA-01 SCS-03

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NSC-05 OES-03 DODE-00 PA-01 USIA-06 COME-00 CIAE-00

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FM AMEMBASSY NASSAU

TO SECSTATE WASHDC 7223

INFO COCG SEVEN MIAMI

C O N F I D E N T I A L NASSAU 1518

E.O. 11652: GDS

TAGS: EFIS BF

SUBJ: HANDLING OF ARREST CASES IN CONNECTION ENFORCEMENT OF
SPINY LOBSTER

REF: A. STATE 214394; B. STATE 217534

1. REFTELS RAISE SERIES OF QUESTIONS ON WHICH CLARIFICATION
WOULD BE HELPFUL.

2. RE REF B., I AM INFORMED BY ADMIRAL WAGNER, COCG SEVEN
MIAMI, THAT BOARDING IN QUESTION WAS MADE WELL WITHIN GCOB
THREE MILE LIMIT. WHILE REF B MAKES IT CLEAR THAT RANDOM
BOARDINGS EVEN WITHIN TERRITORIAL SEA ARE NOT PERMISSABLE,
WE WONDER WHETHER FIRST PROTEST UNDER NEW GCOB ENFORCEMENT
OF CONTINENTAL SHELF LEGISLATION WOULD NOT BEST BE LEFT TO A
CLEARCUT CASE OF SUCH ENFORCEMENT AND/OR BOARDINGS ON THE
CONTINENTAL SHELF, OUTSIDE THE 12-MILE LIMIT AND CERTAINLY
OUTSIDE THE THREE-MILE LIMIT. OUR INCLINATION WOULD BE TO
HOLD OFF IN THE INSTANT CASE SINCE WE FEEL THAT A PROTEST ON
A BOARDING WITHIN THREE-MILE LIMIT MAY CONFUSE THE ISSUE OR
BE AT VARIANCE WITH OUR OWN PRACTICES. HOWEVER, WE SOLICIT
DEPARTMENT'S INSIGHTS.

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EM REF A SET FORTH A GENERAL APPROACH TO BE FOLLOWED IN HANDLING ARREST CASES. WHILE VERY USEFUL, IT NEVERTHELESS LEAVES A NUMBER OF POINTS UNCLEAR:

(A) I HAD SUGGESTED AT THE TIME OF MY WASHINGTON CONSULTATIONS ON THE SPINY LOBSTER PROBLEM THAT "L" DEVELOP A RATHER DETAILED EXPOSITION OF OUR LEGAL POSITION ON THE ISSUE, I.E., SPECIFICALLY THE BASIS ON WHICH OUR PROTEST IS BASED. I UNDERSTOOD QUITE CLEARLY FROM DISCUSSIONS WITH REPRESENTATIVES FROM "L" THAT THEY BELIEVED SUCH A CASE EXISTED AND, OF COURSE, OUR NOTE TO GCOB ALLEGES THIS TO BE A FACT. NEVERTHELESS, I HAVE NEVER SEEN A DETAILED POINT-BY-POINT EXPOSITION OF OUR POSITION. I HAVE HEARD REFERENCES TO OTHER DISPUTES CITED AS PRECEDENTS, SUCH AS THE ICELAND FISHERIES PROBLEM, BUT IN THE ABSENCE OF A DETAILED CASE, I CANNOT TELL WHETHER THE CIRCUMSTANCES IN THESE OTHER INSTANCES ARE SUFFICIENTLY COMPARABLE SO AS TO MAKE OUR POSITION A STRONG ONE. AS A RESULT, IT IS DIFFICULT FOR ME, EXCEPT AT A RATHER HIGH LEVEL OF GENERALITY, TO EXPLAIN OUR POSITION TO GCOB OR TO LOCAL PRESS. I, THEREFORE, CONSIDER IT ESSENTIAL THAT "L" PREPARE THE DETAILED CASE WHICH THEN SHOULD BE REVIEWED AT POLICY LEVEL SO THAT WE MAY BE CONFIDENT THAT WE DO HAVE THE MOST FORCEFUL CASE POSSIBLE.

(B) REF B MAKES NO MENTION OF OUR ICJ PROPOSAL TO GCOB. I RECOGNIZE THAT IT WAS CLEAR TO ALL OF US THAT INCLUSION OF THIS PROPOSAL (I) WOULD REQUIRE GCOB AGREEMENT TO BE EFFECTIVELY PURSUED, (II) THAT SUCH AGREEMENT WAS NOT VERY LIKELY, (III) IF GCOB AGREED TIMING WOULD BE SUCH AS NOT TO PROVIDE PRACTICAL RELIEF FOR FLORIDA FISHERMEN. INDEED, THERE WAS SOME IMPLICATION THAT PROPOSAL WAS MADE TO SOME EXTENT FOR THE RECORD WITHOUT NECESSARILY EXPECTING A GCOB RESPONSE AT ALL. THE QUESTION IS, HOWEVER, WHAT DO WE PROPOSE IN THIS REGARD? DO WE WANT TO PUSH GCOB FOR A RESPONSE, OR SHOULD WE SIMPLY LET THE ISSUE LIE?

(C) NOT UNRELATED TO PRECEDING POINT IS THE QUESTION OF THE PURPOSE TO BE ACHIEVED BY THE PROTESTS TO BE MADE. AGAIN, IT IS NOT ENTIRELY CLEAR TO ME WHAT PURPOSE THE PROTESTS ARE TO ACHIEVE OTHER THAN ESTABLISHING A RECORD WHICH MAY HAVE SOME SIGNIFICANCE IN REGARD TO OTHER FUTURE FISHERY DISPUTES. IF THE PROTESTS ARE FOR THIS LATTER PURPOSE, WHAT PRECISELY DOES DEPARTMENT UNDERSTAND WOULD BE GAINED AS MATTER APPLIES TO OTHER POTENTIAL FISHERY DISAGREEMENTS? ALTERNATIVELY, DOES CONFIDENTIAL

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DEPARTMENT BELIEVE PROTESTS HAVE PRACTICAL APPLICATION IN THE BAHAMIAN SPINY LOBSTER DISPUTE? IF SO, WHAT ARE THEY?

(D) AS A FURTHER RELATED POINT, HOW LONG DOES DEPARTMENT BELIEVE IT NECESSARY FOR OUR CONTINUING TO PROTEST? IF IT IS PRIMARILY FOR THE RECORD AND/OR TO ESTABLISH PRECEDENT WITH REGARD TO FUTURE POTENTIAL DISPUTES, WOULD ONE OR A FEW PROTESTS SERVE THE PURPOSE? SINCE WE ARE UNCERTAIN AS TO PURPOSE TO BE SERVED, IT REALLY IS NOT CLEAR TO US HOW MANY PROTESTS,

OVER WHAT PERIOD OF TIME AND TOWARD WHAT SPECIFIC END DEPARTMENT HAS IN MIND.

(E) THERE IS, OF COURSE, QUESTION OF IMPLICATIONS OF PROTEST OR REPEATED PROTESTS FOR U.S./GCOB RELATIONS. I HAVE NO DESIRE WHATSOEVER TO BE "PROTECTIVE" OF THAT RELATIONSHIP. AT THE SAME TIME, HOWEVER, I WOULD LIKE TO HAVE SOME REASSURANCE THAT REPEATED PROTESTS, WHICH SURELY CANNOT BE EXPECTED TO HELP THAT RELATIONSHIP, ARE INTENDED TO SERVE SOME WELL THOUGHT THROUGH OBJECTIVE.

(F) FINALLY, THERE IS A QUESTION AS TO IMPACT ON FISHING INTERESTS IN FLORIDA. THIS SEEMS TO ME TO CUT TWO WAYS. ON THE ONE HAND, MAKING PROTESTS PRESUMABLY SHOW THAT USG IS DOING WHATEVER IT CAN TO SUPPORT FISHERMEN'S INTERESTS. ON THE OTHER HAND, AS PROTESTS HAVE NO PRACTICAL EFFECT, I DOUBT THAT THIS WILL PERSUADE FISHERMEN THAT USG IS DOING MUCH ON THEIR BEHALF. MOREOVER, THERE IS A DANGER THAT IF PROTESTS BECOME PUBLIC, AS THEY MOST CERTAINLY WILL, THAT FISHERMEN COULD BE STIMULATED TO TAKE MORE VIGOROUS ACTION ON THEIR OWN BEHALF IN THE MISTAKEN BELIEF THAT U.S. PROTESTS SIGNIFY AGREEMENT THAT THEY HAVE BEEN IMPROPERLY EXCLUDED FROM THE BAHAMIAN BANKS. AS DEPARTMENT KNOWS, THE FISHERMEN HAVE BEEN THREATENING TO ARM THEMSELVES FOR CONFRONTATION WITH BAHAMIAN POLICE BOATS. SO FAR, THREATS HAVE BEEN HOLLOW AND WE WOULD NATURALLY HOPE TO KEEP THEM THIS WAY. THERE IS NO QUESTION IN MY MIND THAT THE IMPORTANT TACTICAL DISTINCTION BETWEEN ACKNOWLEDGING BAHAMIAN SOVEREIGNTY OVER THE BANKS WHILE PROTESTING THE INADEQUATE PERIOD FOR TRANSITION FOR OUR FISHERMEN WILL BE TOTALLY LOST ON AMERICANS AND CUBAN-AMERICANS BASED IN FLORIDA. TO THEM, A U.S. PROTEST IS A U.S. PROTEST AND WILL BE TAKEN TO SIGNIFY THE RIGHTEOUSNESS OF THEIR POSITION. THERE MAY BE OVERRIDING CONSIDERATIONS WHICH SUGGEST THAT WE MUST RUN THIS RISK, BUT DEPARTMENT SHOULD BE AWARE THAT IT EXISTS.

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RM I URGE THAT DEPARTMENT CONTEMPLATE ABOVE QUESTIONS AND PROVIDE US WITH ITS THINKING. THE ONE THING THAT DEPARTMENT SHOULD BE UNDER NO ILLUSION ABOUT IS THAT FROM GCOB POINT OF VIEW AND CONTRARY TO IMPLICATIONS OF REF B, THEY DO NOT VIEW THEIR ACTIONS AS INVOLVING "SUDDEN FULL ENFORCEMENT" OR "SUDDEN FULL APPLICATION OF THE BAHAMIAN LAW." ALTHOUGH THE MINISTRY OF AGRICULTURE DECLARED THE SPINY LOBSTER A CREATURE OF THE CONTINENTAL SHELF IN JULY OF THIS YEAR, THE LAW WAS PASSED A YEAR AGO WITH FULL INDICATION THAT GCOB WOULD ENFORCE THE LAW AS OF AUGUST 1, 1975. BETWEEN ORIGINAL PASSAGE OF LAW AND AUGUST 1, SOME 10 MONTHS PASSED DURING WHICH TIME U.S. FISHERMEN, WHO WERE WELL AWARE OF THE NEW BAHAMIAN LEGISLATION AND ITS IMPLICATIONS FOR THEM, WERE PERMITTED TO CONTINUE FISHING FOR LOBSTERS ON THE CONTINENTAL SHELF. PRESUMABLY THE "L" POSITION CALLED FOR IN PARA 3 (A) ABOVE WILL TAKE THIS INTO ACCOUNT IN

ESTABLISHING A CLEAR AND PERSUASIVE LEGAL CASE AS TO WHY USG
IS "ENTITLED TO PROTEST PATTERN OF BAHAMIAN ENFORCEMENT AGAINST
OUR FISHERMEN," WHICH "PATTERN" OF COURSE IS NOT YET DISCERNIBLE.
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